

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 96-786

September 26, 1997

CENTRAL MAINE POWER COMPANY
Petition for Approval to
Furnish Gas Service in and
to Areas Not Currently
Receiving Natural Gas Service

INTERIM ORDER

WELCH, Chairman; NUGENT and HUNT, Commissioners

In this Order, the Commission rejects a per se rule that prohibits electric utilities from engaging in the gas distribution business. However, before Central Maine Power Company (CMP) will be permitted to serve gas customers, certain issues raised by CMP's status as an electric utility must be resolved.

On December 20, 1996, Central Maine Power Company requested authority to furnish gas service in and to areas not currently receiving natural gas service. Petitions to intervene have been granted on behalf of the Public Advocate (OPA), Mid-Maine Gas Utilities, Inc. (MidMaine), the Town of Jay, the Industrial Energy Consumer Group (IECG), and Northern Utilities, Inc. (Northern). At a Prehearing Conference, the Examiner suggested that, as part of the broad public interest standard to be applied to a petition under section 2105, the Commission should preliminarily decide whether an electric utility should be authorized to become a gas utility in areas where gas utility service does not currently exist. The Examiner invited the parties to comment on whether the Commission should:

find that the public interest will not be served by allowing CMP to operate as a gas utility, because of the electric utility's incentive to sell electricity, or for any other reason, especially when gas service does not currently exist?

All parties filed comments.

CMP contends that there are no potential anti-competitive consequences of its participation in a local gas distribution company. Concerns regarding affiliated transactions, the use of CMP's rights of way and cross-subsidization from the electric business to the gas business or vice versa can be addressed when CMP files for approval under 35-A M.R.S.A. § 707 and 708 to establish a gas business. At this time CMP states that it merely

desires approval under 35-A M.R.S.A. § 2105 to develop its plans and establish a customer base and cannot imagine how it could use a conditional certificate such as that granted to MidMaine Gas to inhibit gas service in favor of electricity.

The OPA believes that CMP should not be excluded from obtaining a conditional certificate for gas service because CMP also serves as an electric utility. The OPA notes that the Commission has not erected any barriers that prevent CMP from telecommunications ventures and to do so for natural gas interests seems inconsistent. Furthermore, the OPA argues that blocking CMP from entering the natural gas industry is inappropriate because potential benefits would be lost. While the OPA concurs that the Commission must guard against market power abuses, such goals could be accomplished by imposing conditions on any certificate issued as a result of this proceeding rather than by the prohibition of CMP from the gas business.

Mid-Maine Gas argues that CMP should not receive the same treatment as Mid-Maine received because of the differences between CMP and Mid-Maine. Mid-Maine asserts that the issue of public interest is "especially acute" where the petitioner is presently engaged in a business which is in direct competition with the proposed activity for which the enterprise now seeks approval. In such an instance, the utility should be required to demonstrate that the new activity will not be adversely affected by the applicant's electric service. CMP should demonstrate that there would be no cross-subsidies which will allow it to eliminate competition or unfairly burden electric customers with gas costs.

Northern Utilities does not believe that CMP will be able to preclude other entities from serving gas in the same area in which CMP is authorized to sell gas. Northern argues that issues of cross-subsidization may arise, and lists five issues which should be reviewed:

1. How to properly allocate between electric and gas customers the cost of joint services such as metering and billing;
2. How to preclude CMP from subsidizing the more competitive gas services with revenue derived from the monopoly electric services;
3. Should the electric utility be able to use its name recognition and customer lists developed under the monopoly electric side of the business to the benefit of its gas business;

4. Should the electric utility be required to create a separate corporate identity to provide the gas service; and
5. To what standards of conduct should the gas affiliate be held in dealing with its electric affiliate.

The IECG argues that the Commission should dismiss CMP's petition unless the Commission finds that granting approval will not cause unfair competition or cross-subsidization, and that no approval should be granted until these issues are addressed.

The Town of Jay requests that the Commission address and decide the issues in this proceeding in a manner that will not preclude, impede or complicate the provision of service by any other provider of gas service in an area subject to the petition of Central Maine Power Company.

DECISION

The Commission recognizes that there are competitive issues associated with Central Maine Power Company's becoming a local gas distribution company. The existence of these issues does not, however, require that we decide now that CMP may not become a local gas distribution company. We can deal effectively with competitive issues, as well as the affiliated interest and cross-subsidy issues, at a later stage of the proceeding, and avoid or mitigate any potential harm. Moreover, any per se rule to prohibit an electric utility (soon to be transmission and distribution or T&D utility) from entering the gas distribution business would be inconsistent with the Legislature's recent decision to permit affiliates of T&D companies to market electricity after electric restructuring takes place in the year 2000. P.L. 1997, c. 316, § 3, enacting 35-A M.R.S.A. § 3205. The Legislature decided, in the sale of electricity context, that potential anti-competitive and affiliated transactions issues should be regulated rather than prohibited.

In its comments, CMP appears to assume that it will conduct its gas business as a separate subsidiary, because CMP states that section 708 approval will be required. We agree that a separate subsidiary is appropriate. Moreover, we could expressly condition a grant of section 708 approval on our reservation of our authority to require divestiture of the subsidiary should circumstances warrant. See 35-A M.R.S.A. § 708(2)(A)(8).

We expect, and CMP acknowledges, that CMP will structure its gas distribution venture in a manner which addresses the cross-subsidy and affiliated-interest issues raised in the comments of

the parties. We will address the adequacy of CMP's actions in this regard before final operating authority is granted.

We remind the Company (and all applicants) of the standards for approval delineated in the Commission's Order in Docket No. 96-465. Mid Maine Gas Utilities, Inc., Docket No. 96-465, (Me. PUC, March 7, 1997). MidMaine Gas Utility was able to demonstrate need in the areas in which it requested approval. In its demonstration of technical ability, MidMaine was able to discuss who the company principals would be, how it would develop its system, generally where the system would be constructed, which customers would be targeted for marketing, and how much it would cost to develop. A credible showing of financial capability will logically be based upon some estimate of what it will cost to develop a system, and therefore must follow the demonstration of technical capability. Those same standards must be met by CMP and any other parties seeking approval to furnish gas service in and to areas not currently receiving natural gas service.

Accordingly, we

O R D E R

1. That CMP's application to provide gas service be processed in accordance with the standards of approval delineated in Docket No. 96-465;
2. That CMP may provide gas service only through a separate corporate subsidiary.

Dated at Augusta, Maine, this 26th day of September, 1997.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Hunt

This document has been designated for publication

